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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/892,727

06/27/2001

Scott Swix

60027.0018US01/BS01040

4789

39262

7590

01/03/2007

MERCHANT & GOULD BELLSOUTH CORPORATION

P.O. BOX 2903

MINNEAPOLIS, MN 55402

EXAMINER

TRAN, HAI V

ART UNIT

PAPER NUMBER

2623

MAIL DATE

DELIVERY MODE

01/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Interview Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/892,727	SWIX ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hai Tran	2623	

All participants (applicant, applicant's representative, PTO personnel):

- (1) Hai Tran. (3) \_\_\_\_\_  
 (2) Murrell W. Blackburn. (4) \_\_\_\_\_

Date of Interview: 22 December 2006.

Type: a) ☒ Telephonic b) ☐ Video Conference  
 c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
 If Yes, brief description: \_\_\_\_\_

Claim(s) discussed: 1.

Identification of prior art discussed: Prior Art of Record.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: The Examiner agrees to withdraw the 35 USC 112 rejections and agrees to enter the amendment to the specification. The amended claims seem to overcome the prior art rejection; However, the Examiner needs to update search and consideration.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

**HAITRAN**  
**PRIMARY EXAMINER**

  
 Examiner's Signature, if required

521-273-7305

PTOL-413A (09-04)  
Approved for use through 07/31/2008, OMB 0651-0031  
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

## Applicant Initiated Interview Request Form

Application No.: 09/892,727 First Named Applicant: SWIX  
Examiner: HAZ V. TRAN Art Unit: 2623 Status of Application: NON-FINAL

## Tentative Participants:

(1) EX. TRAN (2) Murrell Blackburn 50,881  
(3) \_\_\_\_\_ (4) \_\_\_\_\_Proposed Date of Interview: Friday 12/22 Proposed Time: 2 (AM/PM) (PM)

## Type of Interview Requested:

(1) ☒ Telephonic (2) ☐ Personal (3) ☐ Video ConferenceExhibit To Be Shown or Demonstrated: ☐ YES ☒ NO

If yes, provide brief description: \_\_\_\_\_

## Issues To Be Discussed

Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior	Discussed	Agreed	Not Agreed
(1) <u>103</u>	<u>1,6,20,21,25</u> <u>26</u>	<u>Art Middle</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) _____	_____	<u>Rangarajan</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Continuation Sheet Attached					

## Brief Description of Arguments to be Presented:

See attached proposed AmendmentEXAMINER suggestions are also welcome

An interview was conducted on the above-identified application on \_\_\_\_\_.

**NOTE:** This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01).

This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.

Murrell W. Blackburn  
Applicant/Applicant's Representative Signature

Examiner/SPE Signature

Murrell W. Blackburn  
Typed/Printed Name of Applicant or Representative50,881

Registration Number, if applicable

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

S/N 09/892,727

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Scott Swix et al. Examiner: ~~Kirubel Akhile~~ **TRAN**  
Serial No.: 09/892,727 Group Art Unit: 2617  
Filed: June 27, 2001 Docket No.: 60027.0018USU1/BS01040  
Title: Remote Diagnostic Tool for a Media Delivery Network

CERTIFICATE UNDER 37 CFR 1.6(d):

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on December \_\_\_\_\_, 2006.

By: \_\_\_\_\_  
Name: Selina Moore

PROPOSED FOR INTERVIEW PURPOSES ONLY AMENDMENT & RESPONSE

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

This Amendment is being filed in response to a Office Action dated October 19, 2006, Please reexamine and reconsider the application in view of the amendments and appended remarks.

**Amendments to the Specifications** are reflected on page 2 of this paper.

**Amendments to the Claims** are reflected in the listing of claims that begins on page 3 of this paper.

**Remarks** begin on page 10 of this paper.

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**AMENDMENTS TO THE SPECIFICATION:**

Please amend the specification as follows:

Please replace the paragraph that begins on line 22 of page 16 with the following amended paragraph:

The method proceeds from step 422 to decision block 424. At decision block 424, a determination is made as to whether an identified problem can be remotely remedied. If the problem can be remedied, the method branches from decision block 424 to step 426. At step 426, the problem is remedied. The method then proceeds to step 428 and ends. It should be appreciated that the diagnostic software may be removed to conserve valuable memory resources.

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PROPOSED FOR INTERVIEW PURPOSES ONLY AMENDMENTS TO THE CLAIMS:

This listing of claims will replace all prior versions and listings of claims in the application.

Listing of Claims:

1. (Currently Amended) A method for analyzing the operation of a media delivery device, the method comprising the steps of:

determining whether a network connection is functional;

determining whether a first diagnostic agent is functional, in response to a determination that the network connection is functional;

causing the first diagnostic agent to collect diagnostic data associated with the media delivery device, in response to a determination that the first diagnostic agent is functional;

analyzing the diagnostic data to determine an operational problem associated with the media delivery device; [[and]]

removing the first diagnostic agent from the media delivery device;

uploading a second diagnostic agent to the media delivery device, in response to a determination that the first diagnostic agent is not functional; ~~and, wherein uploading the second diagnostic agent deletes the first diagnostic agent, thereby conserving memory resources.~~

removing the second diagnostic agent from the media delivery device.

2. (Original) The method of Claim 1 further comprising the step of uploading the first diagnostic agent to the media delivery device over an alternative network connection, in response to a determination that the network connection is not functional.

3. (Canceled)

4. (Original) The method of Claim 1 further comprising the step of remedying the operational problem.

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5. (Original) The method of Claim 4 further comprising the step of uploading a second diagnostic agent to the media delivery device, in response to a determination that the network connection is not functional.

6. (Currently Amended) A diagnostic tool for remotely analyzing and diagnosing the performance of a media distribution device, comprising:

a data adapter operative to maintain a communication link between the media distribution device and a media delivery service provider;

an intelligent diagnostic agent residing in the media distribution device and operative to collect diagnostic data associated with the media distribution device; and

a diagnostic service center operative to communicate with the intelligent diagnostic agent over the communication link to retrieve the diagnostic data and to determine a performance problem associated with the media delivery device;

wherein the diagnostic service center uploads the diagnostic agent to the media distribution device in response to detecting the performance problem; and

wherein the intelligent diagnostic agent removes the intelligent diagnostic agent from the media distribution device ~~upon remedy of the performance problem, thereby conserving memory resources.~~

7. (Original) The diagnostic tool of Claim 6, wherein the performance problem is also associated with a second device functionally connected to the media distribution device.

8. (Original) The diagnostic tool of Claim 6, wherein the media distribution device is a set-top box.

9. (Original) The diagnostic tool of Claim 6, wherein the intelligent diagnostic agent is a program module residing in a system memory of the media distribution device.

10. (Original) The diagnostic tool of Claim 9, wherein the intelligent diagnostic agent is executable in the system memory.

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11. (Canceled)
12. (Currently Amended) The diagnostic tool of Claim [[11]] 6, wherein the diagnostic service center can determine whether the diagnostic agent is functional.
13. (Currently Amended) The diagnostic tool of Claim [[11]] 6, wherein the diagnostic service center can replace the diagnostic agent with a substitute diagnostic agent, in response to a determination that the diagnostic agent is not functional.
14. (Original) The diagnostic tool of Claim 6, wherein the communication link is broadband connection.
15. (Original) The diagnostic tool of Claim 14, wherein the communication link is an asymmetric digital subscriber line.
16. (Original) The diagnostic tool of Claim 6, wherein the communication link is a satellite connection.
17. (Original) The diagnostic tool of Claim 6, wherein the diagnostic service center is further operative to remedy the performance problem.
18. (Original) The diagnostic tool of Claim 17, wherein the diagnostic service center is further operative to remedy the performance problem by uploading a replacement program module to a system memory of the media distribution device.
19. (Original) The diagnostic tool of Claim 17, wherein the diagnostic service center is further operative to remedy the performance problem by establishing a secondary communication link between the media distribution device and the media delivery service provider.



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20. (Currently Amended) A self-diagnosing media distribution system, comprising:  
a media delivery service provider operative to transmit a media content stream to a media distribution device;  
a diagnostic service center for communicating with the media distribution device to retrieve diagnostic data from the media distribution device and to send remedial data to the media distribution device; and  
an intelligent diagnostic agent residing in the media distribution device and operative to collect diagnostic data associated with the media distribution device and to transmit the diagnostic data to the diagnostic service center wherein the diagnostic agent is uploaded to the media distribution device in response to detecting a performance a problem;  
whereby the performance problem associated with the media distribution device can be remotely remedied; and  
wherein the intelligent diagnostic agent removes the intelligent diagnostic agent from the media distribution device ~~upon remedy of the performance problem, therein conserving memory resources.~~

21. (Currently Amended) A computer program product comprising a computer-readable medium having control logic stored therein for causing a computer to analyze the operation of a media delivery device, the control logic comprising computer-readable program code for causing the computer to:

determine whether a network connection is functional;  
upload a first diagnostic agent via the network connection;  
determine whether ~~[[a]]~~ the first diagnostic agent is functional, in response to a determination that the network connection is functional;  
cause the first diagnostic agent to collect diagnostic data associated with the media delivery device, in response to a determination that the first diagnostic agent is functional;  
analyze the diagnostic data to determine an operational problem associated with the media delivery device; and

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upload a second diagnostic agent to the media delivery device, in response to a determination that the first diagnostic agent is not functional; ~~and, wherein uploading the second diagnostic agent replaces the first diagnostic agent, thereby conserving memory resources.~~

remove the first and second diagnostic agent from the media delivery device.

22. (Previously presented) The computer program product of Claim 21, further comprising computer-readable program code for causing the computer to upload the first diagnostic agent to the media delivery device over an alternative network connection, in response to a determination that the network connection is not functional.

23. (Canceled)

24. (Previously presented) The computer program product of Claim 21, further comprising computer-readable program code for causing the computer to remedy the operational problem.

25. (Currently Amended) An intelligent diagnostic agent residing in a media distribution device within a self-diagnosing media distribution system, the intelligent diagnostic agent operative to:

collect diagnostic data associated with the media distribution device; and

transmit the diagnostic data to a diagnostic service center; and

remove the intelligent diagnostic agent from the media distribution device;

wherein the diagnostic service center is operative to communicate with the intelligent diagnostic agent over a communication link to retrieve the diagnostic data, to determine a performance problem associated with the media distribution ~~delivery~~ device, and to send remedial data to the media ~~distribution~~ device; and

wherein the intelligent diagnostic agent is uploaded to the media distribution ~~delivery~~ device in response to detecting a performance problem; ~~and~~

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~~wherein the intelligent diagnostic agent removes the intelligent diagnostic agent from the media distribution device upon remedy of the performance problem, thereby conserving memory resources.~~

26. (Currently Amended) A method of diagnosing media service delivery troubles to a remote site, the method comprising the steps of:

detecting an occurrence of a trouble-shooting condition that indicates at least one trouble-shooting action should be performed;

conveying at least one first diagnostic software agent over at least one interface responsive to at least detecting the occurrence of the trouble-shooting condition, the at least one first diagnostic software agent capable of being executed by at least one device at the remote site; and

~~deleting the at least one first diagnostic software agent from the at least one device at the remote site. upon performing the at least one trouble shooting action, thereby conserving memory resources.~~

27. (Previously presented) The method of claim 26, further comprising the step of conveying at least one second diagnostic software agent in response to detecting that the at least one first diagnostic software agent is not operational on the at least one device at the remote site.

28. (Previously presented) The method of claim 26, wherein the conveying of the at least one first diagnostic software agent is further responsive to at least detecting that at least one communication path is at least partially inoperable between a central service center and the remote site.

29. (Previously presented) The method of claim 28, wherein the at least one first diagnostic software agent is conveyed between the central service center and the remote site over at least one second communication path.

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30. (Previously presented) The method of claim 29, wherein the at least one second communication path comprises a wireless link.

31. (Previously presented) The method of claim 30, wherein the wireless link comprises satellite communication.

32. (Previously presented) The method of claim 26, wherein code related to the at least one first diagnostic software agent is stored in the at least one device at the remote site for diagnostic testing and is later removed to conserve memory resources of the at least one device.

33. (Previously presented) The method of claim 26, wherein the at least one first diagnostic software agent is interactive with a customer through a presentation device.

34. (Previously presented) The method of claim 1, further comprising the step of entering identification of the media delivery device in a service log.

35. (Previously presented) The method of claim 34, wherein entering the identification of the media delivery device is performed autonomously by the diagnostic agent.

36. (New) The method of claim 1, further comprising:  
presenting a user interface over the media presentation device; and  
receiving input from a user via the user interface.

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**PROPOSED FOR INTERVIEW PURPOSES ONLY REMARKS**

This Amendment is in response to the Office Action dated October 19, 2006, (hereinafter the "Action"). Examination and reconsideration of the present application is respectfully requested in view of the following remarks. Prior to entry of this response, Claims 1, 2, 4-10, 12-22, and 24-35 were pending in the application, of which Claims 1, 6, 20, 21, 25, and 26 are independent. Claims 1-2, 4-5, 21-22, 24, and 26-27 were rejected under 35 U.S.C. §112, first paragraph and Claims 1-2, 4-10, 12-22, and 24-35 were rejected under 35 U.S.C. §103(a). In addition, the specification was objected to under 35 U.S.C. § 132(a). Applicants hereby address the Examiner's rejections in turn.

**Objection to Specification - 35 U.S.C. § 132(a)**

The Action objected to the specification under 35 U.S.C. 132(a), as introducing new matter. Specifically, the Action states, "[i]t should be appreciated that between steps 426 and 428 the diagnostic software may be removed to conserve valuable memory resources" constitutes new matter. Applicants respectfully traverse this objection.

As indicated in the response filed August 8, 2006, support for the amendment can be found in the original disclosure on page 5, lines 9-11. See Response Filed August 8, 2006, page 10, line 19. Specifically, the disclosure states: "[t]he tool also should permit the temporary installation of diagnostic software for troubleshooting and the subsequent removal of that software to conserve valuable memory resources." See Original Disclosure, page 5, lines 9-11. In addition, Applicants original disclosure discloses the uploading of an intelligent diagnostic agent. See Original Disclosure, page 17, lines 10-11.

Furthermore, Applicants have amended to specification as indicated above. Applicants respectfully submit that the amendment overcomes this objection and adds no new matter. Applicants contend that the mere rephrasing of a passage does not constitute new matter. See MPEP § 2163.07; In re Anderson, 471 F.2d 1237, 176 USPQ 331 (CCPA 1973).

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**Claim Rejections - 35 USC § 112**

In the Action Claims 1-2, 4-5, 21, 22, 24, 26, and 27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Action states:

The claims contain subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. See Action, page 3, lines 10-14.

Independent Claims 1 and 21 have been amended, and support for the amendment can be found in the amended paragraph submitted with this current Amendment and remarks in support of the amended paragraph, *supra*. Applicants respectfully submit that the amendments overcome this rejection and add no new matter.

**Claim Rejections - 35 USC § 103**

Claims 1-2, 4-10, 12-22, and 24-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Middeke et al., U.S. Patent No. 6,445,907, (hereinafter "Middeke"), in view of Rangarajan, U.S. Patent No. 5,987,514 (hereinafter "Rangarajan"). Applicants respectfully traverse this rejection.

Courts have generally recognized that a showing of a *prima facie* case of obviousness necessitates three requirements:

- (i) some suggestion or motivation, whether in the references themselves or in the knowledge of a person of ordinary skill in the art to modify the reference or combine the reference teachings;
- (ii) a reasonable expectation of success; and
- (iii) the prior art references must teach or suggest all claim limitations.

See MPEP §2143; In re Dembiczak, 175 F.3d 994 (Fed. Cir 1999); In re Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998); Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1573 (Fed. Cir. 1996).

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Applicants respectfully submit that the references used in the Action fail the third prong of obviousness in that, the cited references fail to teach or suggest all claim limitations. Claim 1 is patentably distinguishable over the cited art for at least the reason that it recites, *inter alia*, “removing the first diagnostic agent from the media delivery device,” and “removing the second diagnostic agent from the media delivery device.” Independent Claims 6, 20, 21, 25, and 26 each includes similar recitations.

In contrast, Middeke at least does not disclose the aforementioned recitations. Per the Action’s admission, Middeke discloses the diagnostic agent is “pre-loaded” on the media delivery device. (See Action, page 7, lines 1-2.) In addition, the Action states that Middeke deletes the first diagnostic agent by resetting the receiver to factory defaults. If the factory default has a “pre-loaded” diagnostic agent then resetting the media delivery device to factory defaults will not delete the first diagnostic agent. Consequently, Applicants respectfully submit that Middeke does not disclose removing the first and second diagnostic agent from the media delivery device.

Furthermore, Rangarajan does not overcome Middeke’s deficiencies. Rangarajan is being used by the Action to show uploading a second diagnostic agent. Rangarajan does not disclose uploading a second diagnostic agent. Rangarajan merely discloses sending a second event request which could be followed by a third event request and so on. (See Rangarajan col. 5, line 64 - col. 6, line15.) An event request is not a diagnostic agent. An event request is a request that *directs the mid-level manager to poll a device, i.e. the mid-level manager collects information from the device.* (See Rangarajan col. 2, lines 24-27.) A diagnostic agent has to ability to autonomously, among other things, 1) perform various system diagnoses, 2) identify a problem, 3) indicating a failure to identify a problem, 4) attempt to remedy a malfunctioning device, and 5) identify the device upon which it is installed. (See Applicants’ Disclosure page 11, lines 16-25 and page 14, lines 24-25.) Therefore, sending an event request of Rangarajan is not the same as uploading a diagnostic agent as in embodiments of Applicants’ invention. Like Middeke, Rangarajan at least does not disclose uploading a second diagnostic agent to the media delivery device, in response to a determination that the first diagnostic agent is not functional. Moreover, if Rangarajan does not disclose uploading a first or second diagnostic agent, the

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Rangarajan cannot disclose removing the first or second diagnostic agent. Consequently, Applicants respectfully submit that Rangarajan does not disclose removing the first and second diagnostic agent from the media delivery device.

Combining Middeke with Rangarajan would not have led to the claimed invention because Middeke and Rangarajan, either individually or in any reasonable combination, at least do not disclose “removing the first diagnostic agent from the media delivery device,” and “removing the second diagnostic agent from the media delivery device,” as recited by independent Claim 1. Independent Claims 6, 20, 21, 25, and 26 each includes a similar recitation. MPEP §2143.03 citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974) states that “[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested.” In light of the above remarks, Applicants respectfully submit that the Action has failed the third prong of obviousness in that the cited references do not teach or suggest all the claim limitations. Accordingly, independent Claims 1, 6, 20, 21, 25, and 26 each patentably distinguishes the present invention over the cited art, and Applicant respectfully requests withdrawal of this rejection of Claims 1, 6, 20, 21, 25, and 26.

Dependent Claims 2, 4, 5, 22, 24 and 27-35 are also allowable at least for the reasons described above regarding independent Claims 1, 6, 20, 21, 25, and 26, and by virtue of their respective dependencies upon independent Claims 1, 6, 20, 21, 25, and 26. Accordingly, Applicant respectfully requests withdrawal of this rejection of dependent Claims 1, 2, 4, 5, 21, 22, 24, and 26-35.

## II. Dependent Claim 15

The Action rejected dependent Claim 15 by taking “Official Notice.” As a result, Applicants respectfully suggest that the Action has failed to make a *prima facie* case of obviousness. In order to make a *prima facie* case of obviousness, the Examiner must set forth prior art which teach or suggest every claim limitation. See MPEP § 2143. There is nothing in the prior art cited by the Examiner that discloses “wherein the communication link is an asymmetric digital subscriber line”, as recited by dependent Claim 15. Accordingly, dependent



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Claim 15 patentably distinguishes the present invention over the cited art, and Applicants respectfully requests withdrawal of this rejection of dependent Claim 15.

If the Examiner continues to rely on this unsupported contention, Applicants respectfully request the Examiner to provide support. See In re Zurko, 258 F.3d 1379, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001) (holding that the USPTO must point to some concrete evidence in the record to support core factual findings in a determination of patentability); Memorandum by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy (February 21, 2002)(stating that it is never appropriate to rely on common knowledge without evidentiary support evidence on which to base rejection); 37 C.F.R. § 1.104 (providing that when a rejection in an application is based on facts within the personal knowledge of an Examiner, the data should be stated as specifically as possible, *and the facts must be supported*, when called for by the applicant); MPEP § 2144.03 (providing that the Examiner may only take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being "well-known" in the art and, if the Applicant traverses such an assertion, the Examiner *should cite a reference* in support of his or her position.).

### III. New Claim 36

Claim 36 has been added by this amendment. Applicants respectfully submit that Claim 36 is allowable over the cited art and that they add no new matter. Support for new Claim 36 can be found in the specification at least on page 15, lines 1-4.

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### CONCLUSION

In view of the foregoing remarks, Applicants respectfully request the reconsideration and reexamination of this application and the timely allowance of the pending claims. The preceding arguments are based only on the arguments in the Action, and therefore do not address patentable aspects of the invention that were not addressed by the Examiner in the Action. The claims may include other elements that are not shown, taught, or suggested by the cited art. Accordingly, the preceding argument in favor of patentability is advanced without prejudice to other bases of patentability. Furthermore, the Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Action. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 13-2725.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(404) 954-5100

Date: December \_\_\_\_, 2006

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Murrell W. Blackburn  
Reg. No. 50,881

**39262**

PATENT TRADEMARK OFFICE